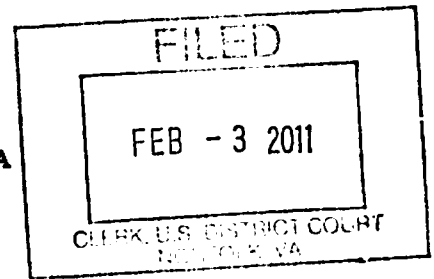


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



HENRY MCKINLEY SCOTT, JR.,

Petitioner,

v.

Case No. 2:10cv61

WARDEN PATRICIA STANSBURY,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2241. The petition alleges violations of federal rights pertaining to Petitioner's conviction and sentence by this Court on November 22, 2000.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the magistrate judge was filed on December 16, 2010, recommending dismissal of the petition with prejudice. (ECF No. 19.) By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the magistrate judge. On December 29, 2010, the Court received the

Petitioner's objections. (ECF No. 20.) The Court received no response to the Petitioner's objections from the Respondent.

The Petitioner's objections primarily reiterate arguments from his petition and cite irrelevant legal authority. As the magistrate judge found in his report, the Petitioner is not entitled to credit for time served in secondary federal custody pursuant to a writ of habeas corpus ad prosequendum when he remained under the primary jurisdiction of state authorities and received credit towards a state sentence. (ECF No. 19, at 8-12.) The Petitioner has not provided any evidence to contradict the findings of the magistrate judge as to when the Commonwealth of Virginia gave up jurisdiction over Petitioner and Petitioner's federal sentence began to run. Finally, contrary to Petitioner's assertion, this Court did have the discretion to order that the sentence at issue be imposed independently of any future state sentence. United States v. Smith, 472 F.3d 222, 226 (4th Cir. 2006) (holding that "a court cannot impose its sentence consecutively to a sentence that does not yet exist"). Accordingly, the petitioner's objections are OVERRULED.

The Court, having reviewed the record de novo and examined the objections filed by the petitioner to the magistrate judge's report, does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on December 16, 2010, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED WITH PREJUDICE

for the reasons stated in the report. Adopting the recommendations in the magistrate judge's report, it is also ORDERED that judgment be entered in favor of Respondent.

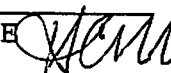
The Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. The Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to the Petitioner and to counsel of record for the Respondent.

/s/

Henry Coke Morgan, Jr.
Senior United States District Judge

UNITED STATES DISTRICT JUDGE



Norfolk, Virginia

~~February~~ 3, 2011
~~January~~